

LUBUTO MUSONDA,)
Petitioner,)
vs.)
THE STATE OF OKLAHOMA,)
Respondent,)

DISTRICT COURT
FILED

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

EXHIBIT 8

- | | | |
|-----|--|--|
| 6. | Check whether the finding of guilty was made | After a plea of not guilty |
| 7. | If found guilty after plea of not guilty,
check whether the finding was made by: | JURY |
| 8. | Name of lawyer who represented you in trial court: | Larry Edwards, OBA # 13838 |
| 9. | Was your lawyer hired by you or your family? | YES |
| 10. | Did you appeal the conviction?
To what court or courts? | YES
OCCA |
| 11. | Did a lawyer represent you for the appeal? | YES |
| 12. | Was it the same lawyer as in No. 9 above?
If "no," what was this lawyer's name? | NO
Neal B. Kirkpatrick,
OBA # 22801 |
| 13. | Was an opinion written by the appellate court?
If "yes," give citations if published:
If not published, give appellate case no.: | Published
January 10, 2019
F-2016-988 |
| | <i>Musonda v. State</i> , 2019 OK CR 1, 435 P.3d 694 | |
| 14. | Did you seek any further review of or relief from
your conviction at any other time in any court? | SEE BRIEF |

PART B

I believe I have ONE proposition and three sub propositions for relief from the conviction and sentence described in PART A. This is the Proposition:

- I. THE PETITIONER RECEIVED INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL FOR FAILING TO RAISE PLAINLY MERITORIOUS ISSUES IN VIOLATION OF THE SIXTH AND FOURTEENTH AMENDMENT.
 - a. Appellate Counsel was ineffective for failing to raise Trial Counsel's ineffectiveness for failing to file a Motion for the Determination of Competency.

- b. Appellate Counsel was ineffective for failing to raise Trial Counsel's ineffectiveness for failing to file a Motion to Dismiss for lack of jurisdiction because Petitioner was exempt from prosecution because of a mental defect rendering him not criminally responsible for his actions
- c. Petitioner has a Sixth Amendment right to the effective assistance of Trial and Appellate Counsel and that right extends to plea negotiations.

II. APPELLATE COUNSEL WAS INEFFECTIVE FOR FAILING TO RAISE TRIAL COUNSEL'S INEFFECTIVENESS FOR FAILING TO CHALLENGE THE DISTRICT COURT'S SUBJECT MATTER JURISDICTION BECAUSE OKLAHOMA CONSTITUTION ARTICLE 1 § 3 PROVIDED EXCLUSIVE JURISDICTION TO THE UNITED STATES.

- 1. Of what legal right or privilege do you believe you were deprived in your case?
DUE PROCESS AND FUNDAMENTAL FAIRNESS
- 2. In the facts of your case, what happened to deprive you of that legal right or privilege and who made the error of which you complain?
SEE BRIEF
- 3. List by name and citation any case or cases that are very close factually and legally to yours as examples of the error you believe occurred in your case.
SEE BRIEF
- 4. How do you think you could now prove the facts you have stated in answer to Question No. 2, above?
SEE ATTACHED
- 5. If you did not timely appeal the original conviction, set forth facts showing how you were denied a direct appeal through no fault of your own.
N/A
- 6. Is this a proposition that could have been raised on Direct Appeal?
Explain:
NO
SEE BRIEF

PART C

I understand that I have an absolute right to appeal to the Court of Criminal Appeals from the trial court's order entered in this case, but unless I do so within sixty (60) days after the entry of the trial judge's order, I will have waived my right to appeal as provided by Section 1087 of Title 22. The party desiring to appeal from the Final order must file a Notice of Post-Conviction Appeal with the Clerk of the District Court within twenty (20) days from the date the order is filed in the District Court. Rule 5.2(C)(1), *Rules of the Oklahoma Court of Criminal Appeals*, Title 22, Ch. 18 App. (2018). The filing of the Notice of Post-Conviction Appeal in the District Court is jurisdictional and failure to timely file constitutes waiver of the right to appeal. 2018 OK CR 1, *effective* February 5, 2018.

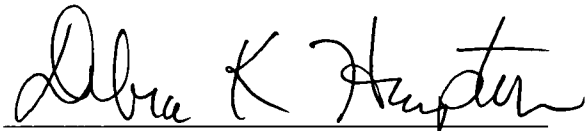
PART D

I have read the foregoing application and assignment(s) of error and hereby state under oath that there are no other grounds upon which I wish to attack the judgment and sentence under which I am presently convicted. I realize that I cannot later raise or assert any reason or ground known to me at this time or which could have been discovered by me by the exercise of reasonable diligence. I further realize that I am not entitled to file a second or subsequent application for post-conviction relief based upon facts within my knowledge or which I could discover with reasonable diligence at this time.

PART E (As Applicable)

I hereby apply to have counsel appointed to represent me. I believe I am entitled to relief. I do not possess any money or property except the following: N/A

Respectfully submitted,



DEBRA K. HAMPTON, OBA # 13621

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Attorney for Defendant/Petitioner

CERTIFICATE OF SERVICE

This is to certify that on January 28, 2021, the original and copies were hand-delivered for filing to the Tulsa County Court Clerk's Office with a request that the Clerk place a file-stamped copy in the **Notice Receptacle of the assigned Judge and the DA's office.**



DEBRA K. HAMPTON